

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STEVEN DYE

Plaintiff,

v.

Case Number: 09-CV-12504
Honorable Denise Page Hood

CITY OF WARREN, *et. al.*,

Defendants.

**ORDER ACCEPTING IN PART AND REJECTING IN PART MAGISTRATE JUDGE
DONALD A. SCHEER'S REPORT AND RECOMMENDATION**

This matter is before the Court on Magistrate Judge Donald A. Scheer's Report and Recommendation ("R&R") [**Docket No. 28, filed on April 19, 2010**]. Neither party has filed an objection, and the time to do so has expired.

Plaintiff Steven Dye initially filed this action in Macomb County Circuit Court, bringing claims against Defendants under 42 U.S.C. § 1983, in addition to state law claims. His Complaint arose from an incident in which Plaintiff was allegedly assaulted and arrested for failing to disclose a handgun he had in his possession, despite having made the officers aware of his Concealed Carry Weapon permit and authorization to carry a gun or firearm. Defendants timely removed the matter to this Court.

This Court agrees with Magistrate Judge Scheer's application of the analysis set forth in *Regional Refuse Systems, Inc. v. Inland Reclamation Co.*, 842 F.2d 150 (6th Circuit 1988), to determine whether dismissal is appropriate for a party who fails to obey an order to provide or permit discovery. Magistrate Judge Scheer reports that Plaintiff's counsel has failed to provide written responses to Defendants' three motions regarding discovery and/or dismissal. Plaintiff

has ignored two court Orders compelling discovery compliance and sanctions. The discovery that was initially provided by Plaintiff in this case was unsworn and “pitifully inadequate.” R&R at 4. Magistrate Judge Scheer also notes that Plaintiff failed to appear for his settlement conference, and has done “virtually nothing” to advance his case. *Id.*

Magistrate Judge Scheer, who oversaw discovery compliance and heard various motions in this matter, recommended that this Court grant Defendant’s Renewed Motion to Dismiss for Failure to Comply with Court Order or to Compel Discovery and Award Sanctions [**Docket No. 23, filed on January 18, 2010**], and to dismiss this case with prejudice. This Court agrees that Defendant’s Renewed Motion to Dismiss for Failure to Comply with Court Order or to Compel Discovery and Award Sanctions should be granted, and dismissal is appropriate. As it is unclear to this Court whether Plaintiff or Plaintiff’s counsel is at fault for failing to comply and cooperate in this matter, Plaintiff’s case is dismissed without prejudice.

Accordingly, for the reasons set forth above and in the Report and Recommendation, **IT IS ORDERED** that Magistrate Judge Donald A. Scheer’s Report and Recommendation [**Docket No. 28, filed on April 19, 2010**] is **ACCEPTED IN PART** as this Court’s findings and conclusions of law. Defendant’s Renewed Motion to Dismiss for Failure to Comply with Court Order or to Compel Discovery and Award Sanctions [**Docket No. 23, filed on January 18, 2010**] is **GRANTED**.

IT IS FURTHER ORDERED that this matter is **DISMISSED WITHOUT PREJUDICE**.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: June 30, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 30, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager